

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Olga Bentin	Team: Squad #04	CCRB Case #: 201805431	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input type="checkbox"/> Abuse <input checked="" type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 06/24/2018 6:40 PM	Location of Incident: Inside of Franz Sigel Park (East 151st Street and Walton Avenue)	18 Mo. SOL 12/24/2019	Precinct: 44
Date/Time CV Reported Sun, 06/24/2018 8:55 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 07/04/2018 12:22 PM

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jeffrey Santos	05777	957133	044 PCT
2. POM Scott Ferguson	22891	957576	044 PCT
3. POM Freddie Salas		953359	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Angela Cheung	14214	956521	044 PCT
2. POM Vladimir Julien	17604	958736	044 PCT
3. POM Christophe Alvarado	06589	961611	044 PCT
4. SGT Timothy Burke	03879	950130	044 PCT
5. SGT Yingyin Yu	00087	948521	044 PCT
6. POM Nestor Lozano	18038	958843	044 PCT
7. POM Hensley Caraballo	21957	962970	044 PCT
8. POM Raymond Pena	03342	962007	044 PCT
9. POM Gregory Piro	23344	962696	044 PCT
10. POM Richard Delahanty	13491	961732	044 PCT
11. POM Abdul Jabbar	18404	961831	044 PCT
12. POF Crystal Williams	19425	960076	044 PCT
13. POM Ali Hussain	17006	960697	044 PCT
14. POM Berat Bicakci	18662	961645	044 PCT
15. POM Anthony Perlmutter	25052	962683	044 PCT
16. POM Jacob Shapiro	12216	962796	044 PCT
17. POM Connor Walsh	10280	957266	044 PCT
18. POM Mark Buono	22456	962276	044 PCT
19. POM Ramon Andujar	11687	945136	044 PCT
20. POF Paola Diaz	18020	943169	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Scott Ferguson	Force: Police Officer Scott Ferguson used a Taser against § 87(2)(b)	
B . POM Scott Ferguson	Force: Police Officer Scott Ferguson used a Taser against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
C . POM Scott Ferguson	Force: Police Officer Scot Ferguson used a Taser against § 87(2)(b)	
D . POM Scott Ferguson	Discourtesy: Police Officer Scott Ferguson spoke discourteously to § 87(2)(b)	
E . POM Scott Ferguson	Off. Language: Police Officer Scott Ferguson made remarks to § 87(2)(b) based upon ethnicity.	
F . POM Scott Ferguson	Force: Police Officer Scott Ferguson used physical force against § 87(2)(b)	
G . POM Scott Ferguson	Force: Police Officer Scott Ferguson restricted § 87(2)(b)'s breathing.	
H . POM Jeffrey Santos	Force: Police Officer Jeffrey Santos used a chokehold against § 87(2)(b)	
I . POM Jeffrey Santos	Force: Police Officer Jeffrey Santos restricted § 87(2)(b)'s breathing.	
J . POM Jeffrey Santos	Force: Police Officer Jeffrey Santos used physical force against § 87(2)(b)	
K . POM Jeffrey Santos	Discourtesy: Police Officer Jeffrey Santos spoke discourteously to § 87(2)(b)	
L . POM Freddie Salas	Force: Police Officer Freddie Salas used physical force against § 87(2)(b)	

Case Summary

On June 24, 2018, Sgt. Yingyin Yu of the 44th Precinct contacted the IAB Command Center and filed this complaint of behalf of a prisoner, § 87(2)(b). On July 4, 2018, this complaint was received at the CCRB. On July 23, 2018, the complaint was closed as Pending Litigation. On December 7, 2018, it was re-opened as per § 87(2)(b)'s request.

On June 24, 2018, at approximately 6:45 p.m., § 87(2)(b) robbed a Home Depot store at 700 Exterior Street in the Bronx, and fled from the officers to Franz Sigel Park.

PO Scott Ferguson, of the 44th Precinct, used a Taser against § 87(2)(b) allegedly striking him in the leg (**Allegation A: Force**, § 87(2)(g)). § 87(2)(b) did not stop and continued to flee. PO Ferguson and another officer, PO Jeffrey Santos, of the 44th Precinct, eventually caught up with § 87(2)(b) when he began to climb a fence. PO Ferguson acknowledged applying a Taser to one of § 87(2)(b)'s thighs (**Allegation B: Force**, § 87(2)(g)). PO Ferguson allegedly applied his Taser to § 87(2)(b)'s back; PO Ferguson acknowledged applying it to § 87(2)(b)'s shoulder (**Allegation C: Force**, § 87(2)(g)).

PO Ferguson allegedly said to § 87(2)(b) "Motherfucker. Son of a bitch. Fucking Spanish people," "Shut up, motherfucker" and "Give me your hands, you motherfucker" (**Allegation D: Discourtesy**, § 87(2)(g)) and (**Allegation E: Offensive Language**, § 87(2)(g)).

PO Ferguson then allegedly dropped his body on top of § 87(2)(b) and hit the side of § 87(2)(b)'s neck with his knee (**Allegation F: Force**, § 87(2)(g)), which restricted § 87(2)(b)'s breathing (**Allegation G: Force**, § 87(2)(g)). Almost simultaneously, PO Santos allegedly placed § 87(2)(b) in a chokehold by grabbing the front of his neck and strangling him (**Allegation H: Force**, § 87(2)(g)), which restricted § 87(2)(b)'s breathing (**Allegation I**, § 87(2)(g)). Afterwards, PO Santos allegedly punched § 87(2)(b) in the face several times (**Allegation J: Force**, § 87(2)(g)), and called him "Motherfucker" repeatedly (**Allegation K: Discourtesy**, § 87(2)(g)). Shortly afterwards, PO Ferguson, PO Santos, and another officer, PO Freddie Salas, who is no longer a member-of-service, allegedly dragged § 87(2)(b) out of the park by pulling his legs, with his chest and face touching the ground (**Allegations H and L continued**, § 87(2)(g)) and (**Allegation L: Force**, § 87(2)(g)).

As a result of this incident, § 87(2)(b) sustained scabs to his right calf, bruises and bumps on his face, bruises and pain to his neck, and was removed to § 87(2)(b).

Because of this incident, § 87(2)(b) was arrested (BR 02 and BR 21) and charged with petit larceny, robbery in the third degree, resisting arrest, menacing in the second degree, criminal possession of stolen property in the fifth degree, and criminal possession of a weapon in the fourth degree, [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

The investigation was provided with BWC recordings of this incident which are discussed in greater details below.

Findings and Recommendations

Allegation (A) Force: Police Officer Scott Ferguson used a Taser against § 87(2)(b)

Allegation (B) Force: Police Officer Scott Ferguson used a Taser against § 87(2)(b)

Allegation (C) Force: Police Officer Scot Ferguson used a Taser against § 87(2)(b)

It is undisputed that PO Ferguson used a Taser against § 87(2)(b) by discharging prongs and by utilizing the drive-stun feature. § 87(2)(g)

The investigation has established the following facts. On June 24, 2018, at 6:45 p.m., § 87(2)(b) robbed a Home Depot store at 700 Exterior Street in the Bronx, by displaying syringes and threatening § 87(2)(b), with them (BR 03). § 87(2)(b) called the police and requested assistance. PO Santos and PO Salas responded to the location and attempted to apprehend § 87(2)(b) but he fled to Franz Sigel Park. PO Santos and PO Salas then engaged in a foot pursuit with § 87(2)(b).

§ 87(2)(b) (BR 01) acknowledged shoplifting from the Home Depot and stated that upon leaving the store, he was menaced with a gun by an unidentified male who told him to stop. § 87(2)(b) ran approximately two blocks when he heard a screeching sound and saw a marked police vehicle pull over behind. PO Ferguson exited the vehicle with a Taser in his hand and § 87(2)(b) ran. PO Ferguson yelled, "Taser," which he then deployed. The Taser prongs struck § 87(2)(b)'s right calf, causing him to fall. As he fell, the prongs broke and stopped ejecting electricity. § 87(2)(b) had a hysteria attack, so he got up and ran. Officers ran after him. § 87(2)(b) ran for approximately a block and felt dizzy, so he sat in the grass in front of the park. PO Santos and PO Ferguson ran into the park past § 87(2)(b). Several seconds later, they returned, approached § 87(2)(b) from behind, grabbed him by the shoulders, and placed him face-down on the ground. § 87(2)(b) put his hands behind his back to signal that he was surrendering and was handcuffed shortly after. PO Ferguson placed a knee on § 87(2)(b)'s back and then applied the Taser to § 87(2)(b)'s back.

§ 87(2)(b) did not make any statements regarding climbing the fence, or being drive-stunned with the Taser in his thigh or shoulder.

§ 87(2)(b)'s medical records from § 87(2)(b) (BR 04) indicate that he was brought to the hospital while in police custody. § 87(2)(b) told medical personnel that he attempted to rob a Home Depot store and that a Taser was applied to his back. He also stated that he was beaten by the officers with fists and night sticks. § 87(2)(b) reported trauma to his face, head, chest, and back, and stated that he lost consciousness. § 87(2)(b) acknowledged to medical personnel that he took cocaine. § 87(2)(b) was diagnosed with a small hematoma to the left parietal region, an abrasion to his right midface under the right eye, and an abrasion to his chest without skin breakage. There was no visible Taser marks or bleeding/abrasions to § 87(2)(b)'s upper back. A CT-scan of § 87(2)(b)'s chest, head, and spine were performed, and no acute trauma, deformities, or fractures were noted. The records note a Taser prong to § 87(2)(b)'s right flank, which was removed and returned to the NYPD.

PO Santos' BWC recording (BR 22) begins with him running as a male voice yells, "Chase him, chase him." At the 00:08 minute mark, PO Santos runs up to § 87(2)(b) who is shirtless and is rolling a food cart. § 87(2)(b) runs and leaves the cart behind. PO Santos chases after him. At the 00:11 minute mark, § 87(2)(b) runs across the street and jumps over a metal railing, disappearing from the camera's view.

PO Ferguson's BWC recording (BR 05) shows PO Ferguson run up a staircase, which presumably leads to the park. PO Salas and PO Santos are at the scene. At the 00:24 minute mark, a male voice is heard yelling at some distance, "Put your hands up. Do not move." PO Ferguson says, "I got Taser," as he puts his gloves on. He then climbs over the cement block and gets further into the wooded park area. At the 00:28 minute mark, PO Ferguson yells to PO Santos,

who is ahead of him, “Go Santos! Go!” PO Ferguson is running while holding a Taser in his right hand. At the 00:35 minute mark, PO Ferguson yells, “Taser, Taser, Taser, Taser,” and then deploys it. The video does not capture § 87(2)(b). It does capture the buzzing sound of the Taser being deployed and § 87(2)(b) yelling, “Ah...Ah.” At the 00:41 minute mark, PO Ferguson yells, “I missed.” At this time, PO Ferguson’s BWC falls off his chest and lands on the ground facing PO Ferguson. It captures PO Ferguson removing the Taser cartridge and placing a new one. PO Santos is heard yelling, “Where he is at?” PO Ferguson replies, “Way up there,” while he picks up the camera off the ground. The camera does not capture § 87(2)(b) or PO Santos. At the 00:48 minute mark, PO Ferguson moves through the woods and yells, “Southbound. He is going over the fence.” The camera does not capture § 87(2)(b). It seems that PO Ferguson drops the BWC again. At the 00:51 minute mark, PO Santos yells, “Grab him. Grab him.” Simultaneously, the buzzing sound of the Taser is heard at some distance and § 87(2)(b) yells, “Ah... ah.” At the 00:56 minute mark, PO Ferguson yells, “Get down,” and the Taser is deployed again. § 87(2)(b) is heard yelling, “Ah...ah.” The camera only captures PO Ferguson’s or § 87(2)(b)’s voices. The video then ends abruptly.

The beginning of PO Santos’ BWC recording (BR 13) captures the same incident as discussed in PO Ferguson’s BWC. At the 00:38 minute mark, PO Santos yells, “Get down!” as he moves towards the fence. At the 00:40 minute mark, the video captures the sound of the Taser being deployed again. It is unclear, but seems that at this time, PO Ferguson turns § 87(2)(b) away from the fence as § 87(2)(b) yells, “Okay, okay, okay officer.” It is unclear whether § 87(2)(b) falls to the ground or whether the officers bring him down. At the 00:45 minute mark, the video captures the sound of the Taser being deployed. Simultaneously, PO Ferguson and PO Santos seem to turn § 87(2)(b) onto his stomach. At the 00:48 minute mark, PO Ferguson says, “Be advised we drive stunned him.” PO Santos is holding § 87(2)(b)’s right hand behind his back. At 00:52 minute mark, PO Ferguson yells to § 87(2)(b) “Give me your arm or I am tasing you again,” as he points his Taser towards § 87(2)(b)’s right upper shoulder. At the 00:55 minute mark, PO Santos pulls out § 87(2)(b)’s left hand, places it behind his back, and says, “Get the cuffs.” § 87(2)(b) says, “Okay.” At the 1:02 minute mark, PO Ferguson says to PO Santos, “I need his arms.” He is able to cuff § 87(2)(b)’s right hand. § 87(2)(b) says, “Let me stand up,” as he extends his hands down to his lower back and arches his back. Between the 01:01 and 01:15 minute marks, PO Ferguson repeatedly tells § 87(2)(b) to give his other hand up. Another officer then grabs § 87(2)(b)’s left hand and holds it until PO Ferguson cuffs it. Officers lift § 87(2)(b) up and escort him out of the park.

EVENT #§ 87(2)(b) (BR 08) documents a call for assistance from § 87(2)(b). It was mentioned that the perpetrator pulled out a weapon, and was described as a Hispanic male, wearing shorts, and no shirt, and that he fled on foot. No injuries were reported.

PO Ferguson’s account (BR 06) was generally consistent with the videos and the EVENT, with the following additional information. PO Ferguson stated that he and Sgt. Yingyin Yu received a “10-13” radio call for assistance by § 87(2)(b), stating that he was threatened with a weapon, possibly needles. Upon arrival at the scene, PO Ferguson saw PO Santos chase after § 87(2)(b) who then ran into the wooded area of the park. PO Ferguson exited his vehicle and followed PO Santos. PO Ferguson and PO Santos ordered § 87(2)(b) several times to stop, but he did not comply. After running through the wooded area of the park for a minute or two, PO Ferguson yelled, “Taser, taser, taser,” warning § 87(2)(b) that he was going to deploy his Taser, which he did several seconds later. PO

Ferguson deployed the Taser because § 87(2)(b) was not stopping, they did not know if he was armed or not at that time, or what else he would try to do. § 87(2)(b) was also faster and that he and PO Santos could not catch up with him. Aside from deploying the Taser, PO Ferguson did not know any other safer technique to stop a fleeing perpetrator in the woods at the distance of 10 or 15 feet. PO Ferguson believed that the Taser prongs either tangled in the tree branches and did not hit § 87(2)(b) or did hit him but § 87(2)(b) pulled them out because § 87(2)(b) did not stop and continued to run.

PO Ferguson then removed the cartridge, placed a new one, and deployed the Taser again. However, it malfunctioned and did not discharge the prongs. At that time, § 87(2)(b) reached the metal fence – of approximately 10 feet high – and began to climb. PO Ferguson and PO Santos ordered § 87(2)(b) to stop and to come down, but he did not comply. PO Ferguson then removed the cartridge from the Taser, ran up to § 87(2)(b) pressed the Taser against § 87(2)(b)'s left or right thigh, pulled the trigger, and held it for approximately two or three seconds. § 87(2)(b) screamed and fell to the ground, landing onto his back. PO Ferguson explained that he used the drive-stun feature of the Taser against § 87(2)(b) to gain his compliance and get him off the fence. PO Ferguson further added that § 87(2)(b) was a lot stronger and a lot more muscular than him and that pulling him off the fence would not have worked, as they could have slipped and rolled down the hill into the woods. The Taser seemed like the safest option for everybody. After § 87(2)(b) fell to the ground, PO Ferguson and PO Santos attempted to grab his hands to place him in handcuffs. § 87(2)(b) swung his arms around, preventing the officers from getting a hold of them. PO Ferguson and PO Santos ordered § 87(2)(b) to stop resisting, but he did not comply. Because PO Ferguson could not get control of § 87(2)(b)'s arms, he used the drive stun feature of his Taser again and stunned § 87(2)(b) in his left upper shoulder to gain his compliance and to get a hold of his arm. PO Ferguson held the Taser against § 87(2)(b)'s shoulder for approximately two seconds. § 87(2)(b) then stopped resisting. PO Ferguson and PO Santos turned § 87(2)(b) face-down. PO Santos placed § 87(2)(b)'s hands behind his back, and PO Ferguson handcuffed § 87(2)(b).

PO Ferguson's Threat, Residence, and Injury Report (TRI) (BR 07) is consistent with his testimony.

The Unusual Occurrence Report (UF-49) (BR 03) prepared by Sgt. Yu is generally consistent with PO Ferguson's testimony.

PO Santos (BR 09) § 87(2)(g) did not remember PO Ferguson discharging a Taser at § 87(2)(b) while they were chasing after him, stating that he was not paying attention to what PO Ferguson was doing. After § 87(2)(b) fled into the park, PO Santos ran after him. § 87(2)(b) ran towards the fence and began to climb it. PO Santos attempted to grab § 87(2)(b) by his legs, but could not reach them. At that time, PO Santos noticed PO Ferguson to his right. PO Ferguson yelled, "Taser, taser," and then stunned § 87(2)(b) in his left or right leg. PO Santos did not remember if PO Ferguson drive-stunned § 87(2)(b) or discharged the prongs. PO Santos stated that everything happened very fast and that he was looking up at § 87(2)(b) and did not pay much attention to PO Ferguson. After PO Ferguson stunned § 87(2)(b) the latter fell to the ground. PO Santos did not remember if § 87(2)(b) landed onto his back or face-down. While on the ground, § 87(2)(b) resisted the officers by refusing to provide them his arms, which he clutched underneath his chest. PO Santos did not recall if § 87(2)(b) resisted in any other

manner. PO Santos eventually grabbed § 87(2)(b)'s arms and pulled them from underneath his chest. He then held § 87(2)(b)'s hands behind his back, while PO Ferguson placed § 87(2)(b) in handcuffs. PO Santos did not remember if PO Ferguson drive-stunned § 87(2)(b) in his shoulder or back while the latter was on the ground.

PO Santos did not prepare a TRI report for this incident, stating that Sgt. Yu told him that it was not necessary.

Sgt. Timothy Burke (BR 10) corroborated PO Ferguson's and PO Santos' account regarding the initial call for assistance, and added that § 87(2)(b) told § 87(2)(b) that the syringes he threatened him with were infected with AIDS. Sgt. Burke did not see the initial pursuit of § 87(2)(b) by PO Santos and PO Ferguson, nor did he see PO Ferguson using Taser against § 87(2)(b). When he reached PO Ferguson and PO Santos, § 87(2)(b) was lying face-down on the ground with PO Santos and PO Ferguson kneeling over him. PO Santos and PO Ferguson grabbed and pulled § 87(2)(b)'s hands behind his back, while issuing him commands to stop resisting. § 87(2)(b) attempted to pull his hands away from the officers, trying to place them underneath his chest. Because the initial radio call mentioned that § 87(2)(b) had syringes on him and PO Santos and PO Ferguson could not restrain § 87(2)(b) fast enough, Sgt. Burke placed his hand on the back of § 87(2)(b)'s upper left or right shoulder to brace him and then punch him one time in the shoulder to gain § 87(2)(b)'s compliance. Sgt. Burke denied using any other force against § 87(2)(b). Sgt. Burke's TRI report (BR 25) is consistent with his testimony.

It is noted in the Medical Treatment of Prisoner Form (BR 14) prepared by PO Jesus Sanchez of the 44th Precinct that § 87(2)(b) complained of pain to his face and that he sustained minor cuts to his face.

The Investigating Supervisor's Assessment Report (ISAR) (BR 15) prepared by Capt. Johnny Orellana of the 45th Precinct is consistent with PO Ferguson's and PO Santos' testimonies. It is noted in the report that § 87(2)(b) was apprehended without an incident and that he made no allegations against the officers.

According to the Patrol Guide Procedure 221-08 (BR 11), a Conducted Electronic Device (CEW) should only be used against persons who are actively resisting, exhibit active aggression, or to prevent individuals from physically injuring themselves or others. Active resisting includes physically evasive movements, such as bracing, tensing, pushing or verbally signaling intention to avoid being taken into custody. When using a CEW, an officer should assess the totality of the circumstances as well as some of the following factors: the nature of the crime committed by the suspect, actions taken by the suspect, duration of action, immediacy of the perceived threat to the subject, officers or bystanders, whether the subject is actively resisting or attempting to flee, the number of subjects, the size, age, and condition of the subject, the subjects' violent history, and if the subject is apparently under the influence of a stimulant. Fleeing should not be the sole justification for using a CEW against a subject. The officer should consider the severity of the offense, the subject's threat level to others, and the risk of serious injury to the subject before deciding to use a CEW on a fleeing subject.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) stated that he was handcuffed on the ground and then a Taser was applied to his back, but did not specify where. § 87(2)(b) did not allege being drive-stunned in the shoulder. § 87(2)(b)'s medical records do not document any injuries to his shoulders. PO Ferguson acknowledged drive-stunning § 87(2)(b) in the shoulder as a means to gain § 87(2)(b)'s compliance, who continued to resist after falling to the ground. PO Santos acknowledged that § 87(2)(b) resisted, but did not remember PO Ferguson drive-stunning him in the shoulder. The BWC shows PO Ferguson yell to § 87(2)(b) "Give me your arm or I am tasing you again," as he points his Taser towards § 87(2)(b)'s right upper shoulder. The BWC videos does not capture PO Ferguson applying the Taser to § 87(2)(b)'s back or deploying the Taser. § 87(2)(g)

Allegation (D) Discourtesy: Police Officer Scott Ferguson spoke discourteously to § 87(2)(b)

Allegation (E) Offensive Language: Police Officer Scott Ferguson made remarks to § 87(2)(b) based upon ethnicity.

Allegation (F) Force: Police Officer Scott Ferguson used physical force against § 87(2)(b)

Allegation (G) Force: Police Officer Scott Ferguson restricted § 87(2)(b)'s breathing.

Allegation (H) Force: Police Officer Jeffrey Santos used a chokehold against § 87(2)(b)

Allegation (I) Force: Police Officer Jeffrey Santos restricted § 87(2)(b)'s breathing.

Allegation (J) Force: Police Officer Jeffrey Santos used physical force against § 87(2)(b)

Allegation (K) Discourtesy- Police Officer Jeffrey Santos spoke discourteously to § 87(2)(b)

Allegation (L) Force: Police Officer Freddie Salas used physical force against § 87(2)(b)

§ 87(2)(b) stated that, after being handcuffed, PO Ferguson placed a knee on his back, and said, "Motherfucker. Son of a bitch. Fucking Spanish people," § 87(2)(b) asked PO Ferguson why he did that since he was already subdued. PO Ferguson replied, "Shut up, motherfucker." PO Ferguson then dropped his body down on top of § 87(2)(b) with his right knee hitting the left side of § 87(2)(b)'s neck. PO Ferguson repeated this movement approximately three times consecutively, which caused § 87(2)(b)'s breathing to be restricted. Simultaneously, PO Santos placed § 87(2)(b) in a chokehold by grabbing and strangling § 87(2)(b) by the front of his neck with his right hand for approximately two

minutes. This action also restricted § 87(2)(b)'s breathing. Using his left hand, PO Santos then punched § 87(2)(b) in the left side of his face approximately ten times and called him "motherfucker." Afterwards, PO Ferguson, PO Santos, and PO Salas dragged § 87(2)(b) out of the park for approximately ten feet by pulling his legs so that his face and chest were touching the ground. § 87(2)(b) stated that, as a result of the force used against him by the officers, he sustained scabs to his right calf, bruises and bumps on his face, and bruises and pain to his neck.

§ 87(2)(b)'s arrest photograph (BR 12) does not show any visible facial injuries.

PO Santos' BWC recording (BR 13), at the 00:45 minute mark, shows, PO Ferguson and PO Santos turn § 87(2)(b) onto his stomach. At the 00:48 minute mark, PO Santos holds § 87(2)(b)'s right hand behind his back. At 00:52 minute mark, PO Ferguson yells to § 87(2)(b) "Give me your arm or I am tasing you again." At the 00:55 minute mark, PO Santos pulls out § 87(2)(b)'s left hand, places it behind his back, and says, "Get the cuffs." § 87(2)(b) says, "Okay." At the 1:02 minute mark, PO Ferguson says to PO Santos, "I need his arms." He then handcuffs § 87(2)(b)'s right hand. § 87(2)(b) says, "Let me stand up," as he extends his hands down to his lower back and arches his back. At the 1:07 minute mark, PO Ferguson yells to § 87(2)(b) "Give me your other hand." § 87(2)(b) replies, "What did I do?" PO Ferguson repeats, "Give me your other hand," as he is unable to get control of it. At the 1:15 minute mark, PO Ferguson yells to § 87(2)(b) "Give me your arm, you motherfucker." § 87(2)(b) replies, "What did I do?" Another officer then grabs § 87(2)(b)'s left hand and holds it until PO Ferguson cuffs it. At the 1:35 minute mark, § 87(2)(b) asks the officers to lift him up, which PO Santos and PO Salas do almost immediately. The video captures several other officers holding § 87(2)(b) whom they then pass to PO Salas. PO Salas then walks § 87(2)(b) out.

PO Salas' BWC recording (BR 23) shows PO Salas walk through the wooded area of the park and approach § 87(2)(b) and the officers. § 87(2)(b) is already handcuffed. At the 00:06 minute mark, PO Salas says, "Bring him over here." The officers walk § 87(2)(b) towards PO Salas. At the 00:19 minute mark, PO Salas takes § 87(2)(b) by his left upper arm and walks him out of the park. § 87(2)(b) is walking on his own power. At no point is § 87(2)(b) dragged by his legs with his face or chest touching the ground.

PO Ferguson denied using or seeing any other officer use any of the alleged force against § 87(2)(b) restricting his breathing in any manner, or making any of the alleged profane or offensive statements towards § 87(2)(b). PO Ferguson did acknowledge; however, that at some point while attempting to handcuff § 87(2)(b) he stated, "Give me your arm, you motherfucker." PO Ferguson explained that he made this statement, because everything was "elevated and heated," the officers were trying to get § 87(2)(b)'s hands, and he was trying to show § 87(2)(b) that the officers were serious. After § 87(2)(b) was handcuffed, PO Ferguson and PO Santos lifted him off the ground. PO Ferguson observed minor cuts to § 87(2)(b)'s face and body, which he believed § 87(2)(b) sustained from running through the woods. PO Ferguson and PO Santos handed § 87(2)(b) to PO Salas, who then escorted § 87(2)(b) from the park. PO Ferguson denied dragging § 87(2)(b) out of the park by pulling his legs, nor did he see PO Santos, PO Salas, or any other officer do so.

PO Santos also denied using any of the above alleged force against § 87(2)(b) nor did he see PO Ferguson or any other officer do so. PO Santos denied making any of the alleged profane statements toward § 87(2)(b) nor did he hear PO Ferguson do so.

Sgt. Burke did not see PO Ferguson or PO Santos use any of the above alleged force against § 87(2)(b) nor did he hear them make any of the alleged discourteous statements or

offensive remarks towards § 87(2)(b) Sgt. Burke did not remember which officer escorted § 87(2)(b) from the park, but denied that he was ever dragged out by his feet.

PO Salas was not interviewed because he is no longer listed as a member-of-service.

Patrol Guide Procedure 203-09 (BR 17) requires all officers to be courteous, respectful, and professional when interacting with the public. As a general matter, officers are not justified in using profanity in the course of a normal conversation that does not engender any type of a high stress. Specifically, the NYPD's disciplinary decisions "have consistently concluded that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer's verbal slip does not rise to the level of actionable misconduct." NYPD Disciplinary Case No. 76927/04 (BR 18).

An officer must use only that force reasonably necessary to gain control of a subject or to effect an arrest. An officer shall not use a chokehold. Patrol Guide Procedure 221-01 (BR 16)

§ 87(2)(g)

§ 87(2)(g)

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 19).
- PO Scott Ferguson has been a member-of-service for four years and this is the first CCRB complaint to which he has been a subject.
- PO Jeffrey Santos has been a member-of-service for four years and has been a subject in one CCRB complaint and one allegation that was closed as unsubstantiated.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of January 28, 2019, no Notice of Claim has been filed regarding this incident (BR 24).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) § 86(1)(3)&(4) § 87(2)(c)

Squad No.: 4

Investigator: _____ _____ _____

 Signature Print Title & Name Date

Squad Leader: _____ _____ _____

 Signature Print Title & Name Date

Reviewer: _____ _____ _____

 Signature Print Title & Name Date